

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

MARK SHAWN FEATHERS,
Plaintiff,
v.
HOUSTON, et al.,
Defendants.

No. 2:20-CV-2208-JAM-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. Pending before the Court is Plaintiff's original complaint, ECF No. 1.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the plaintiff’s claim and the grounds upon which it

1 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege
2 with at least some degree of particularity overt acts by specific defendants which support the
3 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
4 impossible for the Court to conduct the screening required by law when the allegations are vague
5 and conclusory.

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7 I. PLAINTIFF'S ALLEGATIONS

8 Plaintiff names the following as defendants: (1) C/O Houston, a California
9 Department of Corrections and Rehabilitation (CDCR) Correctional Officer assigned to Unit J-2
10 at the California Medical Facility (CMF); and (2) John Doe/Sgt 3rd Watch, the Correctional
11 Officer at CMF presiding over Houston's unit at the time of the event alleged in the complaint;
12 and (3) Daniel E. Cueva, the warden at CMF. See ECF No. 1, pgs. 1-2. According to Plaintiff, the
13 event giving rise to the complaint occurred at CMF in Solano County, California. Id. Plaintiff
14 presents one claim.

15 Plaintiff alleges that Defendant Houston denied Plaintiff the opportunity to shower
16 with the knowledge that Plaintiff worked with chemicals. See id. at 3. Plaintiff claims he returned
17 to his cell after work at the Mental Health Crisis bed facility at 1:25 p.m., and asked Houston for
18 a shower at 1:45 p.m. because he had been working with chemicals. See id. Shortly after asking,
19 Plaintiff claims his face became swollen and he contracted red hives on his arms, hand, and
20 stomach as a result of chemical exposure. See id. at 4. Plaintiff requested a shower two more
21 times and Houston denied him until the program resumed at 3:10 p.m. See id. at 3. Plaintiff
22 alleges that Houston's actions deprived "Plaintiff a basic human need, which caused Plaintiff to
23 suffer from Chemical Exposure," and "did not reasonably advance a legitimate correctional goal."
24 Id. at 4-5. Plaintiff further alleges that John Doe and Daniel E. Cueva were Houston's superior
25 officers during these events and should be "held liable under supervisors liability." Id. at 4.

26 Attached to the complaint are conflicting statements of Plaintiff and Defendant
27 Houston, including first- and second-level response reports of the incident and eye-witness
28 prisoner testimony. Considering conflicting evidence, the Court takes the facts as pleaded by

1 Plaintiff as true and resolves ambiguities in favor of Plaintiff.

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3 **II. DISCUSSION**

4 The Court recognizes a cognizable Eighth Amendment claim against Defendant
5 Houston based on Plaintiff's allegations that Houston deprived Plaintiff of a shower with the
6 knowledge that Plaintiff had been exposed to chemicals. However, Plaintiff fails to state any
7 other cognizable claims, as explained below.

8 Plaintiff alleges Defendant John Doe is the sergeant that headed Houston's unit
9 and Defendant Daniel E. Cueva is the prison's warden. Doe and Cueva are thus in supervisory
10 positions. Supervisory personnel are generally not liable under § 1983 for the actions of their
11 employees. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that there is no
12 respondeat superior liability under § 1983). A supervisor is only liable for the constitutional
13 violations of subordinates if the supervisor participated in or directed the violations. See id. The
14 Supreme Court has rejected the notion that a supervisory defendant can be liable based on
15 knowledge and acquiescence in a subordinate's unconstitutional conduct because government
16 officials, regardless of their title, can only be held liable under § 1983 for his or her own conduct
17 and not the conduct of others. See Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009). Supervisory
18 personnel who implement a policy so deficient that the policy itself is a repudiation of
19 constitutional rights and the moving force behind a constitutional violation may, however, be
20 liable even where such personnel do not overtly participate in the offensive act. See Redman v.
21 Cnty of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc).

22 When a defendant holds a supervisory position, the causal link between such
23 defendant and the claimed constitutional violation must be specifically alleged. See Fayle v.
24 Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir.
25 1978). Vague and conclusory allegations concerning the involvement of supervisory personnel in
26 civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th
27 Cir. 1982). “[A] plaintiff must plead that each Government-official defendant, through the
28 official's own individual actions, has violated the constitution.” Iqbal, 662 U.S. at 676.

1 Plaintiff has failed to show that Doe's and Cueva's actions caused Plaintiff's
2 injury. To state a claim based on supervisor liability, Doe and Cueva must have either participated
3 in the harmful conduct or ordered a specific act or omission by Houston during the alleged events.
4 Plaintiff's allegations are vague and do not specify how Doe and Cueva participated in depriving
5 Plaintiff of a shower. Though Plaintiff appears to concede that the only basis of liability against
6 Doe and Cueva is their roles as supervisors, the Court will nonetheless grant Plaintiff an
7 opportunity to amend with the foregoing in mind.

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III. CONCLUSION

10 Because it is possible that the deficiencies identified in this order may be cured by
11 amending the complaint, Plaintiff is entitled to leave to amend. See Lopez v. Smith, 203 F.3d
12 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is informed that, as a general rule, an
13 amended complaint supersedes the original complaint. See Ferdik v. Bonzelet, 963 F.2d 1258,
14 1262 (9th Cir. 1992). Therefore, if Plaintiff amends the complaint, the Court cannot refer to the
15 prior pleading in order to make Plaintiff's amended complaint complete. See Local Rule 220. An
16 amended complaint must be complete in itself without reference to any prior pleading. See id.

17 If Plaintiff chooses to amend the complaint, Plaintiff must demonstrate how the
18 conditions complained of have resulted in a deprivation of Plaintiff's constitutional rights. See
19 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
20 each named defendant is involved, and must set forth some affirmative link or connection
21 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d
22 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

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1 Because the complaint appears to otherwise state cognizable claims, if no amended
2 complaint is filed within the time allowed therefor, the Court will issue findings and
3 recommendations that the claims identified herein as defective be dismissed, as well as such
4 further orders as are necessary for service of process as to the cognizable claims.

5 Accordingly, IT IS HEREBY ORDERED that Plaintiff may file a first amended
6 complaint within 30 days of the date of service of this order.

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8 Dated: June 7, 2021



9 DENNIS M. COTA
10 UNITED STATES MAGISTRATE JUDGE

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